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to be transported from one state to another, the defendants in the principal case appear to have brought themselves within the above rule, a question which will doubtless be determined on the appeal which has been taken.

To sum up, it may be said with considerable assurance that the line of demarcation separates those courts which see the paramount issue to involve the right of a business organization to regulate its own affairs unhampered by the opinions or actions of labor unions, and those courts which regard as of greater importance the right of organized labor to effectuate its purposes by methods essential to its existence.

E. A. M.

CRIMINAL RESPONSIBILITY OF HUSBAND FOR MALICIOUSLY SLANDERING HIS WIFE.—Again the Supreme Court of North Carolina has been called upon to decide as to the criminal liability of a husband for maliciously slandering his wife. This question has recently been passed upon in the interesting and well considered case of *State v. Fulton*, decided Nov. 25, 1908, and reported in 63 S. E., p. 145.

A statute of North Carolina provides, that if any person shall attempt in a wanton and malicious manner to destroy the reputation of an innocent woman by words written or spoken, which amount to a charge of incontinency, he shall be guilty of a misdemeanor. The defendant was indicted under the provisions of the statute for having defamed his wife. An order was made quashing the indictment for failure to state an offence, and on appeal was affirmed. By a divided court the case of *State v. Edens*, 95 N. C. 693, 59 Am. Rep. 294, was overruled, holding that a husband may be convicted of maliciously slandering his wife under this statute. BROWN and HOKE, JJ., dissenting, while WALKER, J., although concurring in the result, holds that the decision of *State v. Edens*, supra, is a protection to the defendant from indictment for such offence.

The statutes making the slander of women punishable by indictment are of comparatively recent development, and the decisions arising under such statutes are limited in number. Apparently the first case in this country to be decided under a statute of this nature wherein the liability of a husband is involved for the slander of his wife, is the case of *State v. Edens*, supra. In this case a husband was indicted for slandering his wife under the statute in the principal case. In interpreting the statute, the appellate court construed it so as to embrace those not sustaining marital relations, and held that a husband is not indictable for slandering his wife. The court observed in its decision that at common law slander was not the subject of a criminal prosecution, and is now a misdemeanor only in case of the imputation of a want of virtue in an innocent woman, and that the enactments with reference to married women concern the preservation and disposal of property as separate estate, and do not affect the personal relations other than those incidental to property and its use. The decision in the case of *Stayton v. State*, 46 Tex. Cr. R. 205, 78 S. W. 1071, 108 Am. St. Rep. 988, arose under a statute almost identical with the one in question, and the holding of the court was to the effect that the statute was all-embracing, and did not exclude

slander perpetrated by the husband against the wife. A somewhat similar case, although not directly in point, was decided in England in 1882, *Queen v. Lord Mayor*, 16 L. R. Q. B. Div. 772. The married woman's act enacted by the English parliament in 1882 (45, 46 Vict., c. 75, § 12), gives to a wife remedies by criminal proceedings for the protection of her separate property against all persons whomsoever, including her husband, subject to certain limitations as to the husband. Under this statute a husband was prosecuted for publishing a defamatory libel respecting his wife. It was urged by counsel for the wife that the husband be prosecuted, as her good name as a vocalist was her separate property within the meaning of the statute. The court, however, was of the opinion that the separate property as contemplated by the statute was not in jeopardy. The court in concluding said, "* * * Neither as the law stood prior to 1870, nor since, can a wife criminally prosecute a husband or give evidence against him upon a prosecution for a personal libel upon herself."

The decision of the court in the principal case is based principally upon the ground that such a slander is within the letter and spirit of the statute, while the dissenting opinion inclines to the doctrine of *stare decisis*. Another reason given in the dissenting opinion why the construction given this statute in the *Eden* case should be followed is that the wife is not permitted to testify against her husband on the trial of the indictment. In this opinion much stress is laid on the fact that the law, as announced by the court in the *Eden* case, has been acquiesced in by the legislature for a number of years, and that the legislature at its last session voted down a bill intended to change it. However true this may be, the court expressly decided, in *State v. Oliver* (1874), 70 N. C. 60, before this statute was enacted, that a husband had no right to chastise his wife without regard to the animus, weapon used or injury inflicted. No good reason appears to be given why this statute should not protect married women from the false and malicious charges of their husbands. Presumably the legislature knew of the law as announced in *State v. Oliver*, *supra*. It does not seem plausible to infer that the legislature, in view of this decision, would intend that the law should be that a husband will be criminally liable for a simple assault and battery upon his wife, and permit him with impunity to slander her. It would seem that if the legislature intended to permit a husband to utter such a slander without incurring a criminal liability, an exception would have been expressly stated in the statute. The court should enforce the statute as written unless there is some controlling reason to the contrary, notwithstanding the difficulty of enforcing the statute against the husband because the wife may not be a competent witness to prove her own chastity in such cases. It rests with the legislature to remedy this latter defect, if it exists.

WALKER, J., is of the opinion that the judicial interpretation of a statute becomes a part of the statute, and, if that interpretation is afterwards changed or modified, the defendant should be tried under the law as it had been declared to be at the time of the commission of the alleged offence,

simply because it was the law at the time. This ruling is extended farther perhaps than that in the case of *State v. Bell*, 136 N. C. 674, 49 S. C. 163, cited by the court, where the court refused to allow the defendant, who was accused of crime, to be prejudiced by the retroaction of an overruling decision. The true doctrine seems to be that where a statute has received a given construction by the courts of last resort, and contracts have been made and rights acquired under and in accordance with such construction, such contracts may not be invalidated nor vested rights acquired under them impaired by a change of construction made by a subsequent decision. 2 LEWIS' SUTHERLAND STATUTORY CONSTRUCTION, Ed. 2, § 485; *Hill v. Brown*, 144 N. C. 117; *Hill v. Railroad*, 143 N. C. 539; *City of Sedalia v. Gold*, 91 Mo. App. 32; *Railway v. Fowler*, 142 Mo. 670. In case of overruling a decision involving statutory construction, the overruling decision does not retroact so as to invalidate contract rights. *Falcomer v. Simmons*, 51 W. Va. 172; *Douglass v. County of Pike*, 101 U. S. 677. Just how far this doctrine will be carried in the future remains to be seen, but it is safe to say that where contract and property rights are involved the overruling decision will be entirely prospective in its nature. Whether or not this principle should be extended to a criminal statute we are not prepared to say, but with regard to statutes generally it is desirable not so much that the principle of the decision should be capable at all times of justification as that the law should be settled.

J. F. M.

THE BULK SALES LAWS.—The more the commerce of the country expands the greater is thought by many to be the need for the fostering protection of the government. That the ever increasing number of commercial creditors seem to require to be guarded against unscrupulous debtors is evidenced by the number of states which have, principally since 1900, passed the so-called "Bulk Sales Laws." These laws are of particular interest at this time because they have been declared to be constitutional by the United States Supreme Court in the case of *Lemieux v. Young*, 29 Sup. Court R. 174, decided in January, 1909.

The Bulk Sales Laws provide in substance that the sale of the entire stock of merchandise of a retail dealer, or any portion thereof, otherwise than in the ordinary course of trade or in the regular and usual prosecution of the seller's business, shall be presumed to be fraudulent and void (or shall be void) as against the creditors of the seller unless, within a certain number of days before such sale, said creditors shall be notified, or a notice thereof filed with a public official, etc. Thirty-five states and territories, including the District of Columbia, have passed such statutes. In many of these the constitutionality of the acts appears not to have been passed upon. In such case the citation of the statute alone will be given.

Following are the various acts:

California, March, 1903, Civ. CODE, § 3440, construed, but not as to constitutionality, in *Calkins v. Howard*, 83 Pac. 280.

Colorado, May, 1903, Chap. 110.